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Mr. Patrick Galvin
Director
Alaska Division of Governmental Coordination
P.O. Box 110030
Juneau, AK 99811-0030

Dear Mr. Galvin:

This letter provides the views of the Alaska Region of the Forest Service on the proposed regulations prepared by the Division of Governmental Coordination (DGC) regarding Alaska Coastal Management Program (ACMP) Implementation (6 AAC 50). The Forest Service greatly appreciates having the opportunity to comment on this draft, and we hope to work with your office as the proposal moves forward to completion over the next several months.

I commend your office for undertaking this considerable challenge. As you know, the existing ACMP consistency regulations offer very little guidance on how to conduct a review of activities undertaken or authorized by Federal agencies. Moreover, the National Oceanic and Atmospheric Administration issued the final rule amending the Coastal Zone Management Act Federal Consistency Regulations, 15 CFR Part 930, just last month. It is most appropriate, therefore, to update the State consistency regulations at this time, and make them more consistent with the Federal regulations. The proposed State regulations are a huge step in that direction. We believe there is still some work to be done to accomplish that goal. The detailed comments enclosed with this letter are intended to help achieve that result.

If you have any questions regarding the enclosed comments, please contact our ACMP Coordinator, Randy Coleman, at (907) 586-8814.

Sincerely,

JACQUELINE MYERS
Acting Regional Forester

Enclosure

cc:
Office of General Counsel

Detailed Forest Service Comments
DGC Proposed ACMP Consistency Regulations

6 AAC 50.005. Applicability. This section states that any project that "may affect any coastal use or resource is subject to the consistency review process...." This language is broader than the relevant section of the new Coastal Zone Management Act (CZMA) Federal Consistency Regulations (15 CFR 930.33 (a)(1), which states "Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource." To be consistent with these Federal regulations, this section of the State regulations should be changed to read: "A project that *has any reasonably foreseeable direct or indirect effect on* any coastal use or resource is subject to the consistency review process." (New language *in italics*.) We defer to the State regarding whether a definition of the term "reasonably foreseeable" is necessary. If deemed necessary, we would like an opportunity to review the proposed definition. Difficulty in defining the term is not justification for not including it in this section of the proposed State regulations, however, since the term is included in the Federal regulations.

The applicability of this section is also rendered inconsistent with the Federal regulations by the lack of a definition of the term "coastal zone," which is defined in § 304(1) of the CZMA to exclude Federal lands. That definition is referenced in the Federal regulations, but no such reference or exclusion is mentioned in the proposed State regulations. That could give the impression that the proposed State regulations are intended to subject Federal projects affecting only uses and resources on Federal lands to the ACMP consistency review process, an interpretation without foundation in the CZMA. Accordingly, a definition of the term "coastal zone" that clearly excludes Federal lands, consistent with the definition in the CZMA, should be added to the proposed State regulations. (Although the logical place to add this would be in the definitions section, 6 AAC 50.990 at the end of the proposed regulations, it is mentioned here due to its effect on the applicability section and several other sections of the proposed regulations.)

Finally, subsection (c) of this section is very confusing, and should be clarified. It is not clear, for example, how a State consistency response to a Federal consistency determination can be defined as the consistency determination, as this subsection appears to provide.

6 AAC 50.025. Scope of Project Subject To Consistency Review. Subsection (a) of this section states "The coordinating agency, in consultation with any resource agency that requires an authorization, shall determine the scope of the project subject to a consistency review." This language is inconsistent with the Federal regulations, which state in §930.33 (a) that "Federal agencies shall determine which of their activities affect any coastal use or resource," which is the determination that subjects the activity to consistency review. As currently drafted, this subsection of the proposed State regulations purports to provide State agencies discretion to determine, without consulting the Federal agency involved, that parts of a Federal project without coastal effects will be subjected to consistency review. We do not believe the State has this authority under the CZMA.

Subsection (b) of this section specifies several project elements that must be included in the scope of the review. Again, this subsection does not condition its requirements on the presence

of reasonably foreseeable coastal effects, which is inconsistent with the CZMA. Accordingly, we recommend that this subsection be amended to read as follows (new language *in italics*):

> "Except as provided under AS 46.40.094, the scope of the project subject to consistency review must include *all aspects of the project with reasonably foreseeable coastal effects.*"

6 AAC 50.055. Coastal Resource District Responsibility. While the Forest Service has no direct interest in this section, we note that subsection (b)(2) of this section is very confusing. In the interest of clarity, this subsection should be redrafted. We understand that the intent is to allow coastal districts to include an ACMP alternative measure as a condition of a locally issued permit. We recommend that intent be more clearly expressed.

6 AAC 50.216. Pre-Review Assistance. Although Article 2 of the proposed regulations generally does not apply to Federal activities, Article 3 provides that Section 216 governs pre-review assistance for both non-Federal and Federal activities. We are pleased to see language in the proposed regulations regarding pre-review assistance, which we believe will be of great benefit to Federal agencies, especially in the early stages of the planning process for an "unlisted activity," as that term is used in the Federal consistency regulations. Some of the requirements of this section, however, appear inconsistent with the Federal regulations. We believe the pre-review assistance language contained in Section 216 should not apply to Federal activities. Instead, language similar to Section 216, with the changes suggested below, should be substituted for Section 316 of the proposed regulations.

Subsection 216 (b) requires applicants requesting assistance to provide "to the extent feasible, a completed coastal project questionnaire" and other materials. The Federal regulations, in § 930.34(d), encourage Federal agencies to seek such assistance, and require States to provide it upon request. No mention is made of conditioning such assistance on the receipt of a particular form of information such as Alaska's Coastal Project Questionnaire (CPQ). To the contrary, the Federal regulations, in § 930.39(a), provide considerable flexibility to Federal agencies in how they provide information required in consistency determinations ("The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied."). The requirement in the proposed State regulations that applicants requesting assistance must, to the extent feasible, complete a CPQ seems, therefore, overly restrictive and should be deleted.

Subsection 216 (b)(2) provides that the applicant may request the coordinating agency to provide "to the extent feasible, identification of applicable enforceable policies." This language is far weaker than the parallel provision of the Federal regulations, § 930.34(d), which states "Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request." Because another provision of the new Federal regulations, § 930.39(a), requires Federal consistency determinations to include a description of "an evaluation of the relevant enforceable policies of the management program," we believe it is essential that all applicable enforceable policies be articulated by the State upon request, as required by the Federal regulations. Consequently, we recommend that this section of the proposed State regulations be amended to include such a requirement.

Subsection 216 (b)(5) provides that the applicant may request the coordinating agency to provide "to the extent feasible, the identification of the activities that are part of the project subject to review." As discussed above regarding 6 AAC 50.025, the CZMA does not provide the State authority to determine the scope of the project. We recommend, therefore, that this section of the proposed regulations be amended to insert the phrase "the State believes" before "are part of the project subject to review."

Subsection 216 (b)(7) provides that the applicant may request the coordinating agency to provide "to the extent feasible, the identification of possible study requirements necessary to determine consistency with enforceable policies, coastal program issues, and potential mitigation requirements." We support this subsection insofar as it relates to identifying coastal program issues and potential mitigation measures. The identification of possible study requirements, however, appears to go beyond the requirements of the Federal regulations governing the content of Federal consistency determinations. In § 930.39, the Federal regulations require such determinations to include:

- A brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.
- A description of an evaluation of the relevant enforceable policies of the management program.
- A detailed description of the activity, its associated facilities, and their coastal effects.
- Comprehensive data and information sufficient to support the Federal agency's consistency statement.

As we read the Federal regulations, States can ask for additional information, beyond that described above, but they cannot require that additional information be provided. Nor can States unilaterally judge whether a Federal consistency determination meets the requirements described above. Accordingly, we recommend that subsection (b)(7) be amended to read as follows:

> "to the extent feasible, the identification of data and information the state believes is needed support the federal agency's consistency statement and evaluation of the relevant enforceable policies."

Finally, this direction, if amended as suggested above and inserted as Section 316 of the proposed regulations, should refer to "federal agencies" instead of "applicants."

6 AAC 50.305. Federal Activities Subject to Consistency Review. This section has the same problem discussed above regarding the applicability section, 6 AAC 50.005. That is, it purports to require consistency review of Federal activities with any coastal effect, not limited to those that are reasonably foreseeable. This goes beyond the requirements of the Federal consistency regulations. To remedy this, we recommend this section be amended to read as follows (new language *in italics*):

> "In accordance with 15 C.F.R. 930.30-46, as amended, federal agency activities *with reasonably foreseeable effects on* any coastal use or resource must be undertaken in a manner consistent, to the maximum extent practicable, with the enforceable policies of the ACMP."

We also point out that this section will only be consistent with the Federal regulations if another change previously recommended is also made, by adding a definition of the term "coastal zone" that reflects the definition contained in the CZMA.

6 AAC 50.325. Federal Consistency Determination. This section says that, upon receipt of a Federal consistency determination, the Division of Governmental Coordination (DGC) "shall promptly notify the federal agency if the determination is not complete" (emphasis added), whereas the comparable provision of the Federal regulations (§ 930.41) states that "If the information required by § 930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency...."(emphasis added). Accordingly, this section of the proposed State regulations should be amended to substitute the word "immediately" for the word "promptly." This is not merely an academic matter, as will be explained below under the section dealing with requests for additional information.

Subsection 325 (c) specifies seven items that must be included in a "complete" Federal consistency determination. The first four of these items are taken directly from the Federal consistency regulations (as described in the above discussion regarding "Pre-Review Assistance"). Items five, six, and seven, however (a completed coastal project questionnaire, a copy of any necessary State permit, and completed copies of all necessary Federal permit applications), do not fall within the parameters of the items required by the Federal regulations. Accordingly, these items should be deleted from the list of requirements. Again, this is not merely a technical matter, because the Forest Service often does not apply for State and Federal permits that may be needed to implement a project until long after the CZMA review process is completed.

We understand that the intent of this requirement is to have all necessary review processes run concurrently. That is a laudable goal in many circumstances. In others, however, it is more practical for Federal agencies and other applicants to obtain various authorizations at different times, as the information required for them is developed. For many projects, the development of such information is more of a sequential process than a concurrent one. Accordingly, it is not practical to impose a strict requirement that all permit applications be available at the same time.

Finally, it would be useful if this subsection, which virtually quotes much of § 930 39(a) of the Federal regulations, were also to include the two sentences of § 930.39(a) following the ones already included in the proposed State regulations. Those sentences read as follows:

> "The amount and detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied."

6 AAC 50.335. Initiation of Consistency Review of a Federal Consistency Determination. This section provides that DGC will "establish Day 1 of the consistency review as the date on which the public notice is published...." Under the Federal regulations at § 930.41(a), "The 60-day review period begins when the State agency receives the consistency determination and supporting information required...." It would appear that the proposed State regulation as currently drafted is not consistent with this provision of the Federal regulations. We note that

other sections, such as 6 AAC 50.375 and .385, establish deadlines that are measured from receipt of the Federal consistency determination, as provided in the Federal regulations. Accordingly, section 335 of the proposed State regulations may merely be confusing, not seriously troublesome. At a minimum, this apparent inconsistency should be clarified, in a fashion consistent with the Federal regulations.

6 AAC 50.345. Request for Additional Information for a Federal Consistency Determination. This section gives review participants (State resource agencies and coastal districts) 25 days from "Day 1" as defined above to notify DGC of any additional information necessary to complete the consistency review. DGC would be required to forward the request to the Federal agency, which "shall provide the requested information to DGC" unless DGC and the agency agree otherwise. Finally, the requestor "shall notify DGC within seven days after receiving the information whether the information is adequate."

We have several problems with this section. As discussed above, the State review period begins upon receipt of the Federal consistency determination and supporting information, not when the State issues a public notice. In addition, as alluded to above in our comments on Section 325, the timeframe proposed for requesting additional information from a Federal agency does not mesh with the timeframe provided in § 930.41(a) of the Federal regulations, the pertinent part of which reads as follows:

> "If the information required by § 930.39(a) is not included with the [Federal consistency] determination, the State agency shall *immediately* notify the Federal agency that the 60-day review period has not begun, what information required by § 930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency." (Emphasis added.)

We understand that DGC usually publishes a public notice of an ACMP consistency review of a Federal consistency determination about two days after receiving the determination; therefore, "Day 1" of the review as defined in the proposed State regulations is usually about two days after receipt of the Federal consistency determination. Assuming that it normally takes DGC a day or two to forward information requests from a review participant to the Federal agency, that agency might first be notified that the State believes more information is necessary 28 or 29 days after DGC received the determination. That would not seem to meet any reasonable definition of the term "immediately" as used in § 930.39(a) of the Federal regulations.

Therefore, the proposed State regulations should be amended to provide that whenever the State believes that a Federal consistency determination is not complete as defined by § 930.39(a) of the Federal regulations, it must notify the Federal agency immediately, and not start the review. If a definition of the term "immediately" is necessary, we suggest a time limit of 5 days, the time period provided in Article 6 of the proposed State regulations for applicants (including Federal agencies) to exercise their right to seek a review of a proposed consistency determination or response from DGC.

Whenever the State requests information beyond that required by § 930.39, it has more time to request such information, but no authority to insist upon receiving it and no authority to postpone or suspend the review until it is received. Finally, we believe the Federal agency has a role to play in determining whether the information provided meets the requirements of § 930.39(a); it

cannot be solely the State's judgment. All these concepts should be reflected in the proposed State regulations. Perhaps the Memorandum of Understanding (MOU) between the State and the Forest Service on ACMP consistency reviews can be a model for this section, as that MOU deals with all of these issues in a fashion that is much more in keeping with the Federal regulations than do the proposed State regulations as currently drafted.

It is important to note here that the Forest Service (FS) does not intend to be combative or uncooperative with respect to sharing information. As we have stated during the development and implementation of our MOU, if the State asks for more information in response to a FS consistency determination, we will supply the requested information if it is available. The FS will normally not gather new information or conduct additional analysis, however, unless the State provides compelling justification that something essential has been overlooked. This is the approach that we believe should be incorporated into the proposed State regulations.

6 AAC 50.355. Comment Deadline and Review Schedule. There seems to be a typographical error in subsection (b); we recommend changing "federal law" to "federal regulation."

6 AAC 50.365. Review Participant Comments. This section should require reviewers to identify the specific enforceable policy or policies with which they believe a Federal activity is not consistent, whenever they recommend that DGC object to a Federal consistency determination. Subsection (3) of this section should also be amended to insert "enforceable policies of the" before "ACMP."

6 AAC 50.375. Proposed Consistency Response. We recommend the word "with" be inserted after the word "concurs" to correct an apparent typographical error in subsection (b)(3). We also wonder why subsection (d) was included in the proposed regulations. This subsection requires DGC to include an evaluation of the Federal activity against applicable enforceable policies in the proposed consistency response. While such an evaluation is required by the new Federal regulations to be included in or with Federal consistency determinations, it would seem to be an unnecessary burden to require DGC to develop such an evaluation in the response. Given the staffing levels at DGC, and the anticipated increased workload due to implementation of new Federal and State consistency regulations, we believe adding this requirement would add a noticeable and unnecessary strain on DGC's resources. We recommend, therefore, that this subsection be deleted. If it is retained, we note that the phrase "enforceable policies of the" should be inserted before "ACMP." The same change is needed in subsection (e)(3). Finally, to correct a typographical error in subsection (e)(4), the word "the" should be deleted from the phrase "information requested and the an explanation...."

6 AAC 50.385. Final Consistency Response. The phrase "enforceable policies of the" should be inserted before "ACMP" in subsection (b)(3).

6 AAC 50.395. Process for Federal Negative Determinations. This section implies that all Federal activities require either a consistency determination or a negative determination, a position often expressed by some DGC staff. This interpretation is incorrect, however. The Federal regulations, at §930.35, specify the conditions under which a negative determination is required. Without repeating those lengthy criteria here, they are not universal. This interpretation is reinforced by § 930.33(a)(2), which states "If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative

determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the [Coastal Zone Management] Act." Accordingly, we recommend that subsection 395(a) be amended to add at the end thereof the phrase "if the activity meets the criteria specified in 15 C.F.R. 930.35(a)."

Article 4. Consistency Review Process for Federally Regulated Activities. Throughout this entire article, we suggest that another term be used rather than "Federally Regulated Activities," which is not a term of art, and which has unintended connotations. Instead, we suggest the proposed State regulations use a term such as "Federally Licensed or Permitted Activities," "Federally Authorized Activities," or "Activities Requiring a Federal License or Permit," which is the phrase used in the Federal regulations.

6 AAC 50.405. "Federally Regulated" Activities Subject to Consistency Review. Subsection (a)(1) of this section describes the list of FS permits subject to ACMP review. The list used is out of date, however. An updated list is contained in Section 302 B2 of the FS—State MOU.

Subsection (b) of this section gives the impression that DGC can unilaterally require so-called "unlisted activities" to be subjected to ACMP review. Under the Federal regulations, DGC can submit a request to the Office of Coastal Resource Management (OCRM) for such authority, and the Director of OCRM must approve the request before the review is undertaken (unless the applicant voluntarily agrees to submit the project to ACMP review). To avoid confusion, we suggest this subsection be amended by adding at the end the following new sentence:

> "An unlisted federal authorization shall be subject to coastal program review upon approval by the Director of OCRM."

6 AAC 50.435. Initiation of Consistency Review for a Consistency Certification. This section begins "Upon receipt of a complete consistency certification or a consistency certification under 6 AAC 425(c)," which appears to be redundant and should be clarified or corrected.

6 AAC 50.475. Proposed Consistency Response to a Consistency Certification. This section requires DGC to "include an evaluation of the project against applicable enforceable policies" in each consistency response that concurs with a consistency certification. We have the same workload concerns for DGC staff regarding this section as were described above regarding the related requirement in Section 375.

6 AAC 50.610. Elevation Process. Subsections (b)(1), (b)(2), and (c)(3) use phrases such as "the project is consistent," "ensure consistency," and "consistent with the ACMP." For Federal activities, the consistency standard under the CZMA is "consistent to the maximum extent practicable with the enforceable policies" of the ACMP. It would be clearer if each of these subsections were amended to incorporate the entire standard.

Subsection (d)(2) of this section authorizes DGC to "suspend the review schedule by fifteen days" when it receives a request for elevation of a proposed consistency response to a Federal consistency determination. It is important to remember that, under the Federal regulations, there is no authority for such a suspension, so the one described in this section of the proposed State

regulations applies to the State's internal review period only. The State's final consistency response is still subject to the timeframes and extension provisions of the Federal regulations. Unless this is already understood by all parties, it may be worth clarifying in the regulatory language. This point applies to all subsequent steps in the elevation and petition processes; the timeframes for these must comply with the deadlines mandated in the Federal regulations, and the process for extending those deadlines.

Subsection (f) of this section says the resource agency directors "may make a final decision." Subsection (i) of this section, however, states "Only resource agency commissioners may make a final decision." To avoid confusion, subsection (f) should probably be amended to clarify that the resource agency directors' decision is final unless elevated to the commissioners or becomes the subject of a petition to the Coastal Policy Council (CPC).

Subsection (h) authorizes parties with standing to elevate a directors' proposed consistency determination (or response) to the resource agency commissioners; subsection (i) subjects such elevations to the same requirements that apply to director-level elevations. The proposed regulations do not, however, clearly state that parties with standing must request elevation to the resource commissioners within 5 days of distribution of the director-level proposed determination or response. If that is the intent, it should probably be stated explicitly.

6 AAC 50.620. Submission of a Petition on a Proposed Consistency Determination or Response. Subsection (b) of this section provides an applicant the right to file a petition to the CPC only if the applicant submitted comments during the consistency review. This seems illogical, as the applicant would otherwise have no reason to comment during a review of the applicant's consistency determination. In addition, the applicable State statute (AS 4640.096(e)(1)(B)) does not limit an applicant's right to petition in this fashion. Accordingly, this subsection needs to be rewritten, and conforming changes need to be made to other subsections of the proposed regulations (e.g., subsections (d)(4) and (g) of this section, and sections 630 and 650).

Subsections (d)(4) and (g) restrict permissible notices of petition and petitions, respectively, to cases in which the petitioner believes comments provided during the consistency review regarding consistency of the project with a specific enforceable policy of a coastal district management program were not adequately considered. This is an overly restrictive interpretation of an applicant's right to petition as granted in AS 46.40.096(e). Applicants have a right to petition; that right cannot be restricted to cases in which they have previously submitted comments; and such petitions may be allowable on issues other than the applicability of coastal district enforceable policies. It is arguable, for example, that applicants such as Federal agencies have the right to petition in cases in which an agency believes the resource directors have erroneously objected to a Federal consistency determination, based on a misunderstanding of a Federal project's consistency with a State ACMP standard.

6 AAC 50.650. Council Hearing. As discussed above, the petition process as described in the proposed regulations is more restrictive than the authorizing State statute. The CPC should be allowed to hold hearings on petitions filed by applicants, whether or not they made comments

during the consistency review, and arguably about issues not relating to consistency of the project with a coastal district enforceable policy.

6 AAC 50.710. Review Process for Categorically Consistent Determinations. This section establishes a process through which categories of projects can be reviewed for consistency with the ACMP. Subsequently, projects within an "approved" category can be exempted from individual review. This process is limited to activities that require State permits and also have minimal impact on coastal uses and resources. It is not clear why Federal activities that do not require State permits should not be eligible for this process. The new Federal regulations, at § 930.33(a)(3), provide a similar process for "Federal agencies...to identify *de minimus* activities, and request State agency concurrence that these de minimus activities should not be subject to further State agency review." While the proposed Section 780 also applies to such de minimus activities, it would be helpful to provide the flexibility to allow Federal agencies to provide categorical consistency determinations for review and eventual listing on the so-called "A" list, largely because that is a relatively familiar process to many State reviewers, while the process for reviewing a Federal general consistency determination or request for listing activities as de minimus is not.

6 AAC 50.720. Implementation of Categorically Consistent Determinations. If the changes suggested above for Section 710 are made, conforming changes will be needed in Section 720 as well.

6 AAC 50.730 and 740. General Consistency Determinations. The suggestions made above regarding the categorical consistency process apply as well to the general consistency process. That is, Federal agencies should be allowed to submit general consistency determinations for inclusion on the "B" list, even if the activity does not require a State permit. While allowing such authority may appear redundant to the process described in 6 AAC 50.780, there could be activities for which State resource agencies would be willing to agree to a general consistency determination, but only if standard measures are developed and required. Section 730 provides for such a process, Section 780 does not. This cannot be changed by requiring development of standard measures under Section 780, because the language of the Federal regulations on which Section 780 is based does not authorize such a requirement.

6 AAC 50.750. Activities Generally Subject to Individual Consistency Review. Subsection (d) of this section allows DGC to "develop and maintain a list of authorizations that are not subject to an individual consistency review." It is our understanding that this is intended to authorize development of a "D" list, to clarify that authorizations not listed on any component of the existing ABC list is not subject to any consistency review. That intent is not very clear from this brief subsection, and additional language might be helpful. More importantly, we believe any such D list should not be limited to permits. In consultation with Federal agencies and State resource agencies, DGC should be allowed to include types of Federal activities and permits that do not require consistency review.

6 AAC 50.780. General Consistency Determinations for Federal Activities. The citation in subsection (a)(2) contains a typographical error; it should read "15 C.F.R. 930.33(a)(3)."

6 AAC 50.790. General Concurrences for "Federal Regulated" Activities. We recommend the title of this section be changed to "General Concurrences for Activities Requiring a Federal License or Permit" or a similar phrase. We also note that this section seems rather brief, without the detail one would expect, given the procedural requirements in the Federal regulations for issuance of such general concurrences. It may be useful to provide more guidance on how this process will work.

6 AAC 50.800. Project Modifications During a Consistency Review. This section authorizes the coordinating agency to terminate a consistency review if it is discovered that "an additional authorization is required" or if "the description of the project is substantially modified by the applicant." Neither of these "modifications" necessarily result in coastal effects that are substantially different than those originally described. This latter criterion would be a better one to use for terminating a consistency review, and is more consistent with the Federal regulations' criteria for supplemental coordination after a consistency review has been completed (as discussed below).

6 AAC 50.810. Project Modifications After Issuance of a Final Consistency Determination. There is a typographical error in the title of this section ("...A Final Consistency Determinations," emphasis added). Moreover, the title should probably refer also to a "Final Consistency Response," or simply to "Completion of a Consistency Review."

Subsection (a) of this section requires applicants to submit a new CPQ when a proposed project is modified after a consistency review has been completed. That requirement is more restrictive for Federal agencies than is allowed under § 930.39(a) of the Federal regulations, which says "The Federal agency may submit the necessary information [for a consistency determination] in any manner it chooses so long as the requirements of this subpart are satisfied." Information needed to reasonably determine consistency to the maximum extent practicable with enforceable policies of the ACMP can be required; submission of a CPQ cannot be required. Conforming changes are needed to subsection (f) as well.

Subsection (b) of this section states that a new consistency review is required when a modification "will likely cause additional impacts to coastal uses or resources" and needs a new State or Federal permit or a change in an existing State or Federal permit. Similar to the discussion above regarding modifications during a consistency review, these criteria do not match those described in § 930.46 of the Federal regulations, which states "Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described." This includes cases where the proposed activity changes in a way relevant to enforceable policies, and cases where new information becomes available regarding the activity and its coastal effects. Therefore, at least with respect to Federal agencies, subsection (b) should be revised to reflect this criterion, rather than changes in State or Federal permits. Conforming changes to subsections (f), (g), and (h) should also be made.

Subsection (e) of this section provides that DGC will coordinate consistency reviews of modifications requiring "a new or amended federal authorization." It would be clearer and more consistent with applicable State law if this language were amended to say DGC will coordinate

all reviews of Federal consistency determinations and consistency certifications for activities requiring a Federal license or permit.

Subsection (f) has a typographical error; the word "shall" is misspelled in the second sentence.

Given the number of changes needed in this section, it may be better to develop a separate section dealing solely with reviews of modifications of Federal activities and permits.

6 AAC 50.830. Authorization Expiration. This section requires a new consistency review "When an authorization has expired and a new authorization is sought." This criterion does not relate to coastal effects. A new authorization should trigger a new consistency review only if coastal effects associated with the new authorization are substantially different than those associated with the original authorization, or have not been reviewed.

6 AAC 50.990. Definitions. In the definition of the phrase "alternative measure" in subsection (a)(4), the phrase "enforceable policies of the" should be inserted before "ACMP."

The definition of "applicant" in subsection (a)(5) includes applicants for Federal permits. It is important to note that, under the Federal regulations, when one Federal agency applies for a permit from another Federal agency, that activity is still defined as a Federal agency activity subject to Subpart C of the Federal consistency regulations, and not an activity requiring a Federal license or permit subject to Subpart D. This distinction may suggest a need to refine the definition of "applicant" in the proposed State regulations.

There appears to be a typographical error in subsection (a)(8) of this section; perhaps the clause after the semicolon was intended to read "the term 'authorization' also includes a federal permit or license and has the meaning...."

There is no definition of the term "coastal zone," to explicitly exclude Federal lands. This is an important matter to correct, as discussed at the beginning of these comments under "applicability."

The definition of "consistency response" in subsection (a)(15) is very confusing, and should be clarified. Hopefully, this definition can be substantially simplified.

The definition of the term "enforceable policy" in subsection (a)(27) may need a clarification to the effect that, for Federal timber sales, the standards contained in the Alaska Forest Resources and Practices Act are the enforceable policies.

Finally, the definition of "federal consistency determination" in subsection (a)(29) is missing the concept of consistency with enforceable policies. Accordingly, the phrase "enforceable policies of the" should be inserted before "ACMP."